

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH  
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF SEPTEMBER  
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE GODA RAGHURAM**

**WRIT PETITION NO : 11457 of 1996**

Between

Sri.V.Ramaprasada Rao S/o.Reddaiah, Working as Forest Range Officer,  
Govt.Timber Depot Chintur  
Khammam Dist.

..... PETITIONER

AND

1. The Divisional Manager A.P.Forest Development Corporation Ltd  
Paloncha Khammam Dist.
- 2 The Regional Manager A.P.F.D.C. Ltd.,  
Warangal Head Quarters  
at Hanumkonda.
- 3 The Divl.Forest Officer Logging Division  
Badhrachalam.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction more in the nature of the writ of mandamus declaring the action of the Respondents 1 in issuing Ref.No.1-8-36-7A/91-922993, dt.3-12-1993 in ordering recovery of Rs.28,363-60 in 24 installments and the consequential orders of the 3rd respondent in Rc.No.1244/93-T3, dt.2-2-1994 as highly arbitrary, illegal and violative of Article 14 and 21 of the Constitution of India, and consequential to direct the respondents to return the amounts which are recovered from the salary of the petitioner, and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

**Counsel for the Petitioner: MR.P.V.RAMANA**

**Counsel for the Respondents : Sri P. Sriramulu Naidu**

**The Court made the following :**



**THE HONOURABLE SRI JUSTICE GODA RAGHURAM**

**WRIT PETITION No. 11457 of 1996**

**ORDER;**

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By proceedings in Ref. No. 1.8.36/7A/91-922993 dated 03.12.1993, the first respondent herein directed recovery of an amount of Rs.28,363.60 Ps from the petitioner from his salary in 25 installments commencing from his December 1993 salary. Consequent thereupon, the 3<sup>rd</sup> respondent by proceedings R.C.No.1244/93-T3, dated 02.02.1994, directed the petitioner to remit the specified amounts by way of a D.D. in favour of the Divisional Manager, Paloncha. Aggrieved by the order dated 03.12.1993 and the consequent order dated 02.02.1994, the petitioner is before this Court.

During the years 1989-1993 the petitioner was substantially in employment of the Forest Range Officer in the Andhra Pradesh Forest department. While he was working as Forest Range Officer, he was sent on deputation with the A.P. Forest Development Corporation Limited and functioned therein as a Plantation Manager. He was repatriated to his parent Department in May, 1993. By proceeding dated

28.02.1992, the petitioner was called upon to show cause the reasons for missing of certain material viz., Eucalyptus Faggot Wood, in which a shortage was detected in the field, in respect of which the petitioner was charged during his tenure with the corporation. Eventually, by the order dated 03.12.1993, after the petitioner was repatriated to the Forest Department in May, 1993, the first respondent passed orders directing recovery, concluding that from an inspection of the tour diaries of the petitioner, it was apparent that the petitioner failed to inspect the fields where the wood was stocked and where the shortage was detected, during the period March, 1991 till the date of joint inspection conducted by the Divisional Manager, Kothagudem on 01.06.1991. It was also recorded in the order of the first respondent dated 03.12.1993 that despite the petitioner having been informed of the fact, from time to time by the Deputy Plantation Manager, Gopalraopet plantation, he failed to inspect the plantations or inform the facts to the Divisional Manager. As a consequence of the petitioner's improper supervision of the plantations and his gross negligence of duties, the corporation had sustained loss of Rs.56,727-20Ps. for which the petitioner and the concerned Deputy Plantation Managers were found responsible. The order also recorded that the matter having been referred to the Regional Manager, Warangal, the said authority had instructed the first respondent to recover the said amounts from the concerned. On verification of the records, the petitioner was found in charge of all the coups, and hence, the petitioner and the other two Deputy Plantation Managers having been found responsible, recovery is ordered against them of the total loss of Rs.56,727.20 Ps of which 50% of the amount is apportioned towards the petitioner's share for the loss occasioned.

Petitioner assails the impugned order on two grounds:

- a. that the order has not been passed on an independent application of mind by first respondent, but on dictation by the Regional Manager who is an appellate authority in the establishment of the Corporation;
- b. that the impugned order having been passed by the first respondent without consultation with the lending authority viz., the A.P. Forest Department, the order is still born being in violation of the provisions of Rule 31 (2 ) (i) of the A.P. Civil Services (Conduct, Control and Appeal) Rules, 1991.

These are the grounds pleaded in the writ petition without ambiguity or equivocation.

The first respondent filed a counter-affidavit. Insofar as challenge on the ground that the order has been passed without consultation with the lending authority is concerned, the counter-affidavit states at paragraph 9 as under:-

“In reply to ground (c): the petitioner while working under the control of the 1<sup>st</sup> respondent has committed certain irregularities. The irregularities were proved beyond any doubt and the petitioner was made responsible for the loss sustained to the Corporation during his tenure. The 2<sup>nd</sup> respondent who is the competent authority has directed to recover the loss from the petitioner. Accordingly, the recovery orders were issued to the petitioner for the loss sustained to the Corporation during his tenure for which he is fully responsible. There was no other alternative to recover the loss except from the salary of the petitioner. The petitioner meanwhile repatriated back to the Forest Department. The 2<sup>nd</sup> respondent has informed the Conservator of Forests, Khammam vide Ref.No. 8.14.37/93/427, dated 2.6.1995 for recovering the amount ordered for recovery. The conservator of Forests, Khamma who has deputed the petitioner instructed the Divisional Forest Officer (Logging) Bhadrachalam to recover the amounts from the petitioner and remit the amounts to the Divisional Manager, A.P. Forest Development Corporation Ltd., Paloncha every month. Further, the principal Chief Conservator of Forests head of the Forest Department has issue circular instructions vide Ref.No. 38556/88-N3, date 15.05.1989 in circular No. 12/89 to all the Conservator of Forests and Divisional Forest Officers to recover and remit all the pending due amounts pointed out by the A.P.Forest Development Corporation Ltd., from the concerned Officer who have worked in A.P.F.D.C. Ltd., on deputation without any delay. Hence, the contention of the petitioner is false and baseless.”

Insofar as the first ground of attack to the impugned order is concerned, in the considered view of this Court, the ground does not commend acceptance of this Court. The impugned order merely records that the issue was referred to the Regional Manager, Warangal, who after going through all the records, had instructed to recover the said amount from the concerned. Such an instruction by the Regional Manager, ipso facto does not constitute a dictation as to the decision making process. The impugned order clearly discloses an application of mind by the first respondent to all the relevant material. The conclusions as to guilt of the petitioner, his liability and share for the loss concerned, appear to have been arrived at by the first respondent. This contention does not therefore deserve consideration.

With regard to the other contention regarding non-consultation with the lending authority, reliance is placed by the petitioner on Rule 31(2) (i) of the 1991 Rules. To the extent relevant and material for the purposes of this lis, Rule 31 (2) (i) reads as under:-

“If the disciplinary authority is of the opinion that any of the penalties specified in clauses (i) to ((v) of Rule 9 or in Rule 10 should be imposed on him, it may, subject to the provisions of sub-rule (3) of Rule 2 and after consultation with the lending authority, pass such orders on the case as it may deem necessary.”

On a true and fair construction of Rule 31(2) (i), the conclusion is irresistible that the necessity for consultation has been impregnated into the rule to serve a vital governmental purpose and interest. It is possible in a deputation scenario that a deputed officer may commit some misconduct while on deputation. In such cases, if the borrowing authority were to exercise a discretion regarding the disciplinary process and the consequent power of imposing a penalty including the discretion with regard to the quantum of penalty, the lending authority may in the ultimate analysis be saddled with an employee who in a given situation could have committed serious misconduct with the borrowing authority but has escaped serious and condign punishment commensurate with the quantum of misconduct. The obverse may also occur, where a minor misconduct with the borrowing authority may result in the imposition of a major penalty to the detriment of the lending authority insofar as the services of its employee is concerned. In these circumstances, the rule making authority has incorporated a provision of mandatory and prior consultation by the borrowing authority with the lending authority before imposition of a penalty on an employee on deputation. Having regard to the philosophy underlying the provision in Rule 31 (2) (i) and the public interest detriment in construing it as merely directory, this Court is of the considered view that the requirement of prior consultation with the lending authority enacted in Rule 31(2) (i) must be held to be a mandatory provision, the non-compliance whereof renders the imposition of penalty unsustainable. In response to the petitioner's allegation that the lending authority was not consulted, as we have noticed hereinbefore, paragraph 9 of the counter-affidavit of the first respondent camouflages in vague phraseology the fact that no consultation has taken place. To the direct challenge by the petitioner, there is a vague and equivocal assertion that a circular dated 15.05.1989 has been issued by the Principal Chief Conservator of Forests, to all the Conservators of Forests and

Divisional Forests Officers, to recover and remit the pending due amounts pointed out by the A.P. Forest Development Corporation Limited from the concerned officer who has worked in A.P.F.D.C. on deputation. This circular is only to the effect that amounts already determined should be recovered. This circular does not in terms and cannot and in reality disable the mandate of the statutory rule 31(2) (c). The Conservator of Forests and Divisional Forest Officer is incompetent to deminute the mandatory trajectory of rule 31(2) (i) and does not assume to do so either.

As the petitioner's allegation that there was no consultation process has not been denied, the inference is compelling that there was no consultation as required under Rule 31(2) (i). Absent of such consultation, the order dated 03.12.1993 beseeches invalidation, and is accordingly set aside.

The Writ Petition is allowed. There shall be no order as to costs.

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23<sup>rd</sup> September, 2004

bud/pvsn

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday, the Twenty Third Day of September, Two Thousand and Four.

ASSISTANT REGISTRAR

Copy to:

1. The Divisional Manager,  
A.P. Forest Development Corporation Ltd.,  
Paloncha, Khammam District.
2. The Regional Manager, A.P.F.D.C. Ltd., Warangal,  
Head Quarters at Hanumakonda.
3. The Divisional Forest Officer, Logging Division,

Bhadrachalam.

4. Two C.D.Copies